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October 13, 2020

By ECF

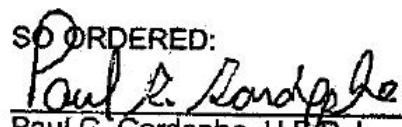
Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Donnell Russell, 20 Cr. 538 (PGG)

MEMO ENDORSED

The Application is granted.

SO ORDERED:


Paul G. Gardephe, U.S.D.J.

Dated: October 14, 2020

Honorable Judge Gardephe:

I write to respectfully request a stay of any deadline for Donnell Russell to seek relevant grand jury records and to challenge his indictment pursuant to the Fifth and Sixth Amendments to the United States Constitution and the Jury Selection and Service Act (“JSSA”), 28 U.S.C. §§ 1867(a) and (f). See *United States v. Hightower*, 20 Cr. 303 (RMB) (ECF No. 18) (staying deadline on a similar application).

Mr. Russell was indicted on October 8, 2020 and charged with conspiracy to threaten physical harm by interstate commerce, in violation of 18 U.S.C. § 875(c) and 18 U.S.C. § 371, and threatening physical harm by interstate commerce, in violation of 18 U.S.C. § 875(c). It is my understanding that he was indicted by a grand jury drawn from the Manhattan Division originally empaneled in November 2018.

Section 1867(a) of Title 28 of the United States Code allows a defendant to move to dismiss an indictment on the ground that the grand jury responsible for indicting him failed to reflect a fair cross-section of the community. 28 U.S.C. §§ 1867(a); see also *Test v. United States*, 420 U.S. 28, 30 (1975). Section 1867(f) enables such motions by allowing a defendant to “inspect, reproduce, and copy... records or papers [used by the commission or clerk in connection with the jury selection process] at all reasonable times during the preparation and pendency of ... a motion” under Section 1867(a). 28 U.S.C. §§ 1867(a), (f); see also *Test v. United States*, 420 U.S. 28, 30 (1975). Inspection of such materials is essential to a defendant’s ability to determine whether he has a potentially meritorious challenge. *Id.*

Pursuant to § 1867(a), a defendant may raise a JSSA challenge “before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefore, whichever is

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earlier." See 28 U.S.C. § 1867(a). Although the Second Circuit has not considered "what constitutes the timely filing of a motion pursuant to the JSSA related to the composition of a grand jury," one court in this district has determined that the statute may require an attempt to inspect grand jury records within seven days of the filing of an indictment. See *United States v. Saipov*, 17 Cr. 722 (VSB), 2020 WL 915808, at *2 (S.D.N.Y. Feb. 26, 2020) (citing cases from the Eleventh Circuit Court of Appeals, the Northern District of Florida, and the Western District of New York).

Based on the *Saipov* decision, numerous requests for grand jury records recently have been made shortly after indictment so that those defendants do not lose their ability to make a statutory and constitutional fair cross-section challenge to their indictment. The Jury Administrator has been managing the requests while also preparing for the resumption of jury trials in this district. In lieu of adding to the list of records request, I respectfully request that the Court stay any deadline for filing a JSSA and constitutional challenge to the composition of the grand jury that indicted Mr. Russell.

In particular, and with the consent of the government, I seek a stay of any deadline for Mr. Russell to seek the relevant grand jury records and raise a fair cross-section challenge until a regular pretrial motion schedule is set, presumably after the discovery is reviewed.

Respectfully submitted,

/s/ Annalisa Mirón
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